

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

NORMAN LAURENCE

v.

A.T. WALL, et. al.

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C.A. No. 08-109ML

**AMENDED
REPORT AND RECOMMENDATION**

Lincoln D. Almond, United States Magistrate Judge

Pending before me are Norman Laurence's Motion for Leave to Appeal In Forma Pauperis ("IFP") (Document No. 243) and Motion to Waive Filing Fee. (Document No. 244). Because I find that the appeal is groundless and thus not taken in good faith, I recommend that the District Court DENY Plaintiff's Motions.

Plaintiff, proceeding pro se, filed this 42 U.S.C. § 1983 and 42 U.S.C. § 1985 action alleging inter alia, that during his term of incarceration at the A.C.I. various defendants subjected him to electronic surveillance as well as listening devices. Plaintiff claims that such defendants use the surveillance devices to watch him perform bodily functions and engage in legal work, and then taunt and harass him with the information they obtain. Plaintiff further alleges that various defendants have impeded Plaintiff's access to the courts, passed around a psychological evaluation of Plaintiff and harassed Plaintiff with the contents thereof; and prevented Plaintiff from receiving adequate mental health care. Magistrate Judge Hagopian issued several Report and Recommendations disposing of the case. Chief Judge Lisi adopted each Report and Recommendation and Plaintiff's case was terminated.

Plaintiff's right to appeal in forma pauperis is governed by 28 U.S.C. § 1915 which provides that, "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). "Because the good faith standard is an objective one, an appeal is deemed not taken in good faith if the issues presented are frivolous. An appeal is considered frivolous when it is based on an 'indisputably meritless legal theory or factual allegations that are clearly baseless.'" Lyons v. Wall, No. 04-380, 2007 WL 2067661 at *1 (D.R.I. July 13, 2007) (internal citations omitted).

In the present case, Plaintiff's proposed appeal to the First Circuit Court of Appeals presents no cognizable legal theories or meritorious factual allegations. Because there was absolutely no merit to Plaintiff's constitutional claims, his appeal is likewise frivolous. Accordingly, I recommend that the District Court find that the appeal is not taken in good faith and DENY Plaintiff's Motion to Appeal IFP (Document No. 243) and Motion to Waive Filing Fee. (Document No. 244).

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen (14) days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
April 5, 2011